



IN THE HIGH COURT OF SOUTH AFRICA  
GAUTENG DIVISION, PRETORIA

Case number: 47216/2021

|                                                                                   |                                     |
|-----------------------------------------------------------------------------------|-------------------------------------|
| (1)                                                                               | REPORTABLE: YES/NO                  |
| (2)                                                                               | OF INTEREST TO OTHER JUDGES: YES/NO |
| (3)                                                                               | REVISED: YES/NO                     |
|  |                                     |
| SIGNATURE                                                                         | 30/08/2023<br>DATE                  |

In the matter between:

IZICASH (PTY) LTD

Plaintiff

v

KAMOZA TECHNOLOGY SOLUTIONS CC

1<sup>st</sup> Defendant

MALESELA RICHARD MAKHAFOLA

2<sup>nd</sup> Defendant

TEBORA PEARL MORIFI

3<sup>rd</sup> Defendant

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JUDGMENT

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MOSOPA J

1. This is an application in terms of Rule 31(2)(a) of the Uniform Rules of Court, which was enrolled on the unopposed motions roll of 22 June 2023, during the

June recess. I raised certain concerns and counsel filed concise heads of argument on 27 June 2023, after which I reserved judgment. I am grateful to counsel for such informative heads of argument.

2. In this matter, the plaintiff issued summons against all the defendants on 20 September 2021, for payment in the amounts of R492 970.00 and R60 000.00, in respect of costs to re-register the first defendant, with interest, and that the second and third defendants be declared jointly and severally liable with the first defendant. It appears that for the purpose of this application, the plaintiff seeks judgment for payment of the amount of R492 970.00, and costs on a punitive scale against the first and second defendants.
3. The reason for this is that the third defendant is the only party defending the plaintiff's action.
4. The first defendant is a juristic person, a company which is duly registered in terms of the laws of the Republic. The second and third defendants are private persons and the members of the first defendant.
5. The plaintiff's action against the defendants stems from the amount of money which was mistakenly transferred into the bank account of the first defendant by Mr. Erasmus, the sole shareholder of the plaintiff. The plaintiff avers that the amount paid was made as a consequence of a reasonable and *bona fide* error on the part of the plaintiff's sole shareholder, who mistakenly thought that such payment was due to the defendants.
6. It is further averred that such amount was supposed to be paid into the bank account of Cash Automation, which is the client of the plaintiff. The second defendant acknowledged that the payment was erroneously paid, but mentioned in a letter sent to the plaintiff as to why he cannot refund the plaintiff, the contents of such letter are, for the purpose of this application, not relevant as the second defendant failed to enter appearance to defend.

7. When the matter served before me on 22 June 2023, I raised an issue with counsel appearing on behalf of the plaintiff that, should I grant the order the plaintiff is seeking, whether that would have the effect of disposing of the matter and secondly, whether the third defendant will suffer prejudice as a result of such order being granted, taking cognizance of the fact that the third defendant is defending the plaintiff's action, which matter has not been set down for hearing.
8. The third defendant is not a party to the current proceedings because she is defending the plaintiff's action. My concern was to the effect that she is a member of the first defendant and if I grant judgment against the first defendant, she will be prejudiced, as the plaintiff is seeking judgment against the whole amount paid to the first defendant.
9. Mr. Davies contended that the first defendant is not defending the action and I can grant the default judgment application against the first and second defendants, even though the action between the plaintiff and the third defendant will still be pending. It is not clear why the third defendant only defended the matter personally and did not defend the matter on behalf of the first defendant, despite knowing what the plaintiff's claim is against the defendants, and more especially, as the member of the first defendant.
10. Further, that the first defendant is recognized in law as a separate juristic personality and as such, the assets of the first defendant are distinct from those of the third defendant and in the event that default judgment is granted, no prejudice will be suffered by the third defendant.
11. It is trite that a duly registered company is a distinct legal persona, a separate entity from its members, either individually or as a body (*Henochsberg' on the Companies Act 71 of 2008*, volume 1, page 82). Mr. Davies took the argument further, stating that it is because of this declaration that the assets of the members of the company must be viewed as distinct from the assets of the company.

12. It is apparent in casu that the money which is the subject matter of the current application was paid into the bank account of the first defendant and in law, is deemed to constitute the asset of the first defendant.

13. Section 19(2) of Act 71 of 2008, provides:

*"[2] a person is not, solely by reason of being an incorporator, shareholder, director of a company, liable for any liabilities or obligations of the company, except to the extent that this Act or the companies Memorandum of Incorporation provides otherwise."*

14. *Henochsberg* at page 88, volume 1 of his book, illustrates and gives an example of what the subsection intends to mean:

*"If a company, other than a listed company, is wound up other than by means of an involuntary liquidation i.e. By court order, without having satisfied it's outstanding tax debt, the persons who are shareholders of the company within one year prior to its winding-up, are jointly and severally liable to pay the tax debt, to the extent that they receive assets of the company in their capacity as shareholders within one year prior to its winding-up and a tax debt existed at the time of the receipt of the assets or would have existed, had the company complied with its obligations under the Tax Act."*

15. No memorandum of incorporation of the first defendant in casu was provided, and thus it is not clear what the extent of the first defendant's liability is, as outlined in the memorandum. It is therefore my considered view that the plaintiff has made a case against the first and second defendants and is entitled to the order as sought. This does not mean that the case against the third defendant has been disposed of, and it remains pending between the plaintiff and the third defendant.

ORDER

16. In the result, the following order is made:

1. The draft order marked "X" dated 22 June 2023 is made an order of court.

  
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MJ MOSOPA  
JUDGE OF THE HIGH  
COURT, PRETORIA

Appearances:

For the plaintiff:

Adv. S. Davies

Instructed by:

LDP Attorneys Inc.

Date of hearing:

22 June 2023

Date of judgment:

Electronically transmitted

IN THE HIGH COURT OF SOUTH AFRICA  
(GAUTENG DIVISION, PRETORIA)

CASE NO.: 47216/2021

BEFORE: The Hon. Mosopa J

ON: 22 June 2023 in Court 4E

In the matter between: -

IZICASH (PTY) LTD

(REGISTRATION NO. 2015/240595/07)

Plaintiff

and

KAMOZA TECHNOLOGY SOLUTIONS CC

Private Bag X67, Pretoria 0001

First Defendant

MALESELA RICHARD MAKHAFOLA

2023-08-31

Second Defendant

TEBORA PEARL MORIFI

GD-PRET-002

Third Defendant

DRAFT ORDER IN TERMS OF UNIFORM RULE 31(2)(a)

HAVING HEARD counsel for the Plaintiff / Applicant and after considering the Plaintiff's application in terms of Rule 31(2)(a) of the Uniform Rules, and after perusal of the papers in support of the mentioned application, judgment is herewith granted against the First and Second Defendants jointly and severally, for an order in the following terms:

1. An order declaring that the Second Defendant is liable with the First Defendant in respect of any liability to the Plaintiff in terms of prayers 2.1 and 2.2 below;
- 2.1 Payment in the amount of R 492 970.00;
- 2.2 Payment in respect of the costs of the application to re-register the first defendant in the amount duly taxed by the Taxing Master of this Honourable Court;
3. Interest on the aforesaid amounts in paragraphs 2.1 and 2.2 (*supra*) calculated at the prescribed rate of interest from the date of summons herein, until the date of final payment;
4. Costs of the suit on the scale as between attorney and client.

BY ORDER

The Hon. Registrar of the High Court, Pretoria

22 June 2023



To: I. DU PISANIE

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